

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 93-737-W/S - ORDER NO. 95-9
JANUARY 4, 1995

IN RE: Application of Heater of Seabrook, Inc.)
 for an Increase in Water and Sewer Rates.) ORDER
) APPROVING
) BOND AND
) SURETY

This matter comes before the Public Service Commission of South Carolina (the Commission) on the December 29, 1994 Order of the Honorable Jean H. Toal of the South Carolina Supreme Court, remanding this matter to the Commission for consideration of Heater of Seabrook, Inc.'s (Heater's or the Company's) Motion to implement its proposed rate increase under bond pursuant to S.C. Code Ann. §58-5-240(D) (1976, as amended).

On January 13, 1994, Heater filed an Application for a rate increase in water and sewer rates with the Commission. The Town of Seabrook (the Town) and the South Carolina Department of Consumer Affairs (the Consumer Advocate) both moved to intervene in the action. A public hearing was held on June 8, 1994 to consider the Application. On July 11, 1994, the Commission issued its written Order, denying Heater's request for an increase in its water and sewer rates. Heater filed a Petition for Rehearing on July 29, 1994, which was denied by the Commission pursuant to Order dated August 25, 1994. On or about September 21, 1994,

Heater filed a Petition for Judicial Review in the Richland County Court of Common Pleas, and at the same time, filed a Motion for Leave of Court to file Rate Increase under Bond. The Town and the Consumer Advocate intervened in the matter at the Circuit Court.

On December 2, 1994, the Honorable Joseph Strickland conducted a hearing to consider Heater's Bond Motion. A written Order filed December 13, 1994, granted Heater's Bond Motion. Seabrook then filed a Motion for Supersedes with the South Carolina Supreme Court. On December 29, 1994, a hearing was held before the Honorable Jean Toal on the matter. On December 29, 1994, Justice Toal issued her Order remanding the Order back to the Commission for consideration of Heater's Motion to Implement its Proposed Rate Increase under Bond pursuant to S.C. Code Ann. §58-5-240(D)(1976, as amended). Justice Toal held in her Order that the Commission retains jurisdiction over a bond matter until the Commission issues an order approving or disapproving the bond or other arrangements, even when a matter is on appeal to the Circuit Court. The Commission must now consider the matter pursuant to Justice Toal's Order, although we disagree with her findings in that Order, and we order General Counsel to prepare a Petition appealing Justice Toal's Order to the full Supreme Court.

During the hearing before the Honorable Joseph Strickland, the Company proposed a bond in the amount of \$806,733 with surety from SafeCo Insurance Company. No objection was raised to either the amount or the surety itself, and in fact, the Commission Staff was consulted about the amount of the bond prior to the hearing

before Judge Strickland. The amount of the bond was derived by multiplying the amount of increase in revenues requested by Heater, but denied in the subsequent rate orders, by $1\frac{1}{2}$ times, and then multiplying that result by two years, which is an average length of time to fully appeal the matter through the Circuit and Supreme Courts. We note parenthetically that Heater, subsequent to Judge Strickland's Order, has filed a bond and surety for this amount with the Clerk of Court for Richland County pursuant to S.C. Code Ann. §58-5-340.

Upon consideration of this matter, we believe that a bond in the amount of \$806,733 as suggested by the Commission attorney before the Circuit Court is reasonable, as is the surety proposed by Heater, and for this reason, we believe that this bond amount and surety should be approved by this Commission.

Upon consideration of this matter, we note that it is a matter for consideration by the entire Commission, and not just by a panel of the Commission, which is required when a water or sewer utility files a schedule setting forth proposed changes with the Commission pursuant to S.C. Code Ann. §58-3-95 (1976, as amended). No schedule setting forth proposed changes has been filed with the Commission pursuant to that statute. Therefore, we hold that the matter of the bond and surety is a matter for consideration by the entire Commission. Further, upon reflection on S.C. Code Ann. §58-5-240(D), we believe that the only role the Commission plays under the statute is to consider whether the bond and surety are reasonable. We think that the statute is mandatory in its

terms that, should a utility post a bond with sufficient sureties, the Commission has no choice but to allow it to put its rates under appeal in effect under the terms of that bond and surety, although we believe this Commission should normally have jurisdiction over the bond and surety only when a company applies for approval of such along with a Petition for Reconsideration of one of our Orders, we are complying with Justice Toal's Order in this case, while appealing her legal reasoning to the full Supreme Court. In the case at bar, we have examined the matter thoroughly and do not believe that a evidentiary hearing or oral arguments are needed in order to make a determination as to the reasonability of the bond and the surety. Further, we should note that the consideration of refunds to consumers should the Company lose on its appeal are to be properly considered after full Court consideration of the merits of the Company's appeal.

Upon consideration of the entire matter, the Commission holds that:

1. The sum of \$806,733 with surety by SafeCo Insurance Company is reasonable and should be approved.
2. No evidentiary hearing is necessary to make that determination under the terms of the statute.
3. Staff shall appeal the December 29, 1994 Order of the single Justice to the full Supreme Court.
4. Heater may, if desired, transfer the bond and surety presently posted with the Clerk of Court for Richland County directly to the Commission.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)